

Unofficial Translation*

**LABOUR'S SKILLS DEVELOPMENT ACT,
B.E. 2545 (2002)**

BHUMIBOL ADULYADEJ, REX.

Given on the 22th Day of September B.E. 2545;
Being the 57th Year of the Present Reign.

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:

Whereas it is expedient to have a law on labour's skill development to replace the law on vocational training promotion

This Act contains certain provisions in relation to the restriction of rights and liberties of persons in respect of which section 29, in conjunction with section 31, and section 35 of the Constitution of the Kingdom of Thailand so permit by virtue of law;

Be it, therefore, enacted by the King, by and with the advice and consent of the National Assembly, as follows:

Section 1. This Act is called "Promotion of Labour's Skills Development Act, B.E. 2545 (2002)"

Section 2. This Act shall come into force after the expiration of one hundred and twenty days from the date of its publication in the Government Gazette.

Section 3. The Vocational Training Profession Act B.E. 2537 shall be repealed.

Section 4. This Act shall not apply to the Ministry, Sub-Ministry, Department, Governmental agency and governmental organization.

* Translated by Ms. Vipatboon Klaosontorn under contract for the Office of the Council of State of Thailand's Law for ASEAN project. – Initial Version – pending review and approval by the Office of the Council of State.

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Section 5. In this Act:

“Labour Skills Development” means a process which enables trainees and working age population to obtain skills, knowledge and ability, professional ethics and good attitude towards work namely training of labour skills, establishment of labour skill standard and other affairs;

“Labour’s Skill Training” means a training to prepare for work, training to improve labour skill and training for career change;

“Pre-employment Training” means a labour skills training prior to employment to enable employee to work in accordance with labor skills standards; ;

“Labour Skill Enhancement” means a training which a business operator, the employer, arranges for additional skill in the professional field which the employee is usually working;

“Training for occupational change” means a training which is provided by the employer for the employee to have additional training outside of the professional field to enable the employee to have knowledge and ability to also work in other professional fields which such employee does not normally work in;

“Curriculum” means subject, content and skill training method;

“Training provider” means a person who provides a labour skill training in accordance with the curriculum and details related to a labour skill training as considered and approved by the registrar under this Act;

“Trainee” means a person who receives a labour skill training as provided by the training provider;

“Trainer” means a person who has duties to train a trainee labour skills ;

“Place of training” means a place where the training provider arranges to have the labour skill training for a trainee;

“Labour Skill Training Centre” means a place of training which is provided separately from the business operator;

“Labour Skill Standards” means academic specification used as the standard to evaluate level of skill, knowledge and capability and work attitude of employees in different professions under this Act;

“Labour Skill Standard Test” means test for training, knowledge and ability, and attitude in work of employee in accordance with the standard of labour’s skill;

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“Labour Skill Standard Test provider” means a person who is permitted to operate Labour Skill Standard Test under this Act;

“Business operator” means a business operator in industrial or commercial sectors or other businesses regardless of whether he or she is an employer to the trainees

“Employer” means employer under the law on labour protection;

“Employee” means employee under the law on labour protection;

“Fund” means Labour Skill Development Fund;

“Committee” means Labor Skills Development Promotion Committee”;

“Competent Official” means a person appointed by the Minister for the execution of this Act;

“Registrar” means the Director-General or a person assigned by the Director-General;

“Director-General” means the Director-General of Department of Skill Development;

“Minister” means the Minister having charge and control of the execution of this Act.

Section 6. The Minister of Labour and Social Welfare shall have charge and control of the execution of this Act and shall have powers to appoint the competent official and prescribe the Ministerial Regulation, Regulation and Notification, for the execution of this Act.

Such Ministerial Regulation, Regulation and Notification shall come into force upon their publication in the Government Gazette.

Section 7. The Minister shall have power to prescribe an occupation for promotion of labour skill development under this Act;

CHAPTER I LABOUR SKILL TRAINING

Part 1 Pre-employment training

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Section 8. For the purpose in receiving the rights and benefits, a person who organize a pre-employment training for occupations prescribed in section 7 shall conduct details concerning the training and submit it to a registrar to consider and approve:

- (1) Curriculum;
- (2) Place of training;
- (3) Name and qualification of trainer;
- (4) Duration of a training;
- (5) A list of necessary equipment to be used in training which already exist and those which shall be subsequently acquired;
- (6) Method and standard for evaluation of the training result;
- (7) Other details as prescribed by the committee.

Consideration for an approval by the registrar shall be in accordance with rules, means and conditions as prescribed by the committee.

An alteration of the details concerning the training in (1), (2), (4) or (6) approved by the registrar is prohibited except otherwise is permitted by the registrar.

Section 9. Qualifications of the trainer shall be as prescribed by the committee.

Section 10. The training provider shall provide rules or regulations on the training in Thai and contain, at least, the followings:

- (1) Duration of the training;
- (2) Training day, time, and break;
- (3) Holiday;
- (4) Leave and the rule on taking leave;
- (5) Allowance during the training;
- (6) Conditions on termination of the training contract;
- (7) Rules on compensation in the case where the trainee is in danger or suffer illness resulting from the training;
- (8) Any other matters as prescribed by the committee.

Section 11. A written contract shall be made between the training provider and the trainer and it shall consist of the list as prescribed by the committee.

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Section 12. The training provider shall comply with the rules on trainee protection prescribed by an announcement of the Minister and shall make the registry of the trainee as evidence.

Section 13. When a trainee has completed the curriculum and passed the evaluation under section 8(6), the training provider shall issue the certificate to certify that he or she has complete the training within fifteen days as from the date that the test has complete and shall notify the registrar.

Section 14. If the training provider wishes to transfer the business to another person, the training provider shall notify, in writing, to the registrar no less than fifteen days prior to the transfer date. It shall be stated whether the transferee wishes to continue the pre-employment training and the transferor and the transferee shall both sign such document.

If the transferee wishes to continue the pre-employment training , the registrar shall register such change and it shall be deemed that the transferee is the training provider in section 8 as from the date of transfer and right and duties of the training provider existing in the contract shall be transferred to the transferee.

If the transferee will not continue to provide the pre-employment training, the registrar shall transfer the trainee whose training is incomplete as from the date of transfer in the same professional field to another training provider or to the governmental labour skill training, the remaining expenses thereof shall be borne upon the transferor.

Section 15. No training provider shall ask for or accept training fee or remuneration in any forms relating to the labour skill training from a trainee.

Section 16. The training provider may arrange for the trainee to receive the labour skill training in an educational institute or government centre for labour's skill training or other centre for labour's skill training as approved by the registrar.

Curriculum and expenses incurred from a training in the educational institute or governmental labour skill training centre under paragraph one shall be approved by the registrar.

Section 17. If the training provider wishes to terminate its business or has other necessary reason which renders it unable to continue to provide the training, it shall notify, in writing, to the registrar and no less than fifteen days prior to the date of dissolution or termination of the training. In such case, if it is the pre-employment training, section 14 paragraph three shall apply to the trainee who has not complete the training on the date of the dissolution or the date that the training provider has other necessary reason which renders it unable to continue to provide the training mutatis mutandis except in the case that the committee sees that this is necessary and exempts the training provider from being liable for an expense of the incomplete training.

Section 18. For the purpose of labour skill development, the training provider may accept school student, college student, university student which an educational institution sends them to receive training in accordance with the curriculum of the educational institution. The curriculum of the training provider or the curriculum of the educational institution and the training provider have corporately conducted, the training provider shall submit the curriculum to the registrar prior to the training except if that curriculum has already been submitted to the registrar and the provisions in section 11, section 12, section 13, section 15, section 33, section 34, section 35, section 36 and section 37 shall apply mutatis mutandis.

The provision in paragraph one shall also apply in the case where the governmental agency sends their personnel to train with the training provider.

Section 19. The establishment of a labour skill training centre shall be in accordance with the rules, means and conditions as prescribed by an announcement of the committee.

Part 2 Labour Skill Enhancement

Section 20. For the purpose of applying for the rights and benefits, the provider of training to enhance the labour's skill or training for an occupational change shall submit the curriculum, relating details and details of the expenses in the training to the registrar for consideration and approval.

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The consideration for approval of the registrar shall be in accordance with rules, means and conditions as prescribed by an announcement of the committee.

In respect to the operation of the training under paragraph one, section 15, section 16, section 17 and section 19 shall apply mutatis mutandis.

Section 21. During the period of the training, the training provider who is the employer shall have duties to the employee as prescribed by the law on labour, employment contract, working rule and agreement on employment condition.

If the training is held at the request of the employee and the written agreement was made, the employer may arrange for the employee to train outside of the normal working time or during holiday of the employee. The employer shall pay the wage to the employee who receives training for no less than the wage paid during the normal working time as per the training hours.

CHAPTER II LABOUR SKILL STANDARD

Section 22. For the promotion of labour skill development, the committee shall conduct the standard of the labour's skill in different occupation and submit to the Minister for approval.

Upon the publication of a labour skill standard approved by the Minister in the Government Gazette, the Department of Skill Development shall use the standard to arrange labour skill standard test in that occupation under section 23 or order the training provider to arrange for the labour skill standard test in that occupation under section 24.

The qualifications of a person taking the test, test method, and certificate stating that such person has passed labour skill standard test shall be as prescribe by an announcement of the committee.

Section 23. The Department of Skill Development shall arrange a labour skill standard test and promote the attendance of people in the labour skill standard test.

Section 24. Any person who wishes to be a labour skill standard test provider shall ask for the permission from the registrar.

A permission and issuance of the license, qualifications of the person taking the test, revocation of the license and withdrawal of the license shall be in accordance with the rules, means and conditions as prescribed by an announcement of the committee.

Section 25. In conducting labour skill standard test, the test fee which shall be collected from the person taking the test shall not exceed the schedule of rate prescribed by an announcement of the committee.

Section 26. Any person who wishes to have the committee to certify a labour skill standard test shall submit the application to the registrar.

An application for labour skill standard, certification of a labour skill standard, the use of a labour skill standard certified by the committee, and the issuance of the certificate to the person who passed the labour skill standard under paragraph one shall be in accordance with the rules, means and conditions as prescribed by an announcement of the committee.

CHAPTER III

LABOUR SKILL DEVELOPMENT FUND

Section 27. There shall be a fund called “Labour skill Development Fund” in the Department of Skill Development, the Ministry of Labour and Social Welfare with the purpose to be the revolving fund for the expenses relating to the promotion of labour skill development.

The fund shall consist of:

- (1) The money transferred from the Labour skill Development Fund established by the resolution of the council of ministers and administered under the rule of the Ministry of Labour and Social Welfare on Labour’s Skill Development Fund B.E. 2539;
- (2) Subsidy allocated by the government;
- (3) Counterpart fund from the business operator;
- (4) Money and assets donated to the fund;
- (5) Fruit and interest resulted from the fund;

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(6) Money or assets vested on the fund other than (1) to (5) that the fund receives in any case.

The money of the fund shall not be remitted to the Ministry of Finance under the law on reserve and the law on budget procedure.

The receipt of money, disperse of money, maintenance of money and fund administration shall be in accordance with the rules prescribed by the committee with an approval of the Minister of Finance.

The Department of Skill Development, Minister of labour and social welfare shall maintain the fund and disperse the fund money in accordance with this Act.

Section 28. The fund shall be disbursed in the following matters:

(1) To lend to the trainee for the expenses relating to the attendees of the labour's skill training under this Act;

(2) To lend to the training provider, provider for labour skill standard test and business operator for the expenses relating to the training providing or labour skill standard test;

(3) To help or support any business operation relating to the promotion of labour skill development in accordance with the rules prescribed by the committee;

(4) To be spent for administration of the fund.

The lending from the fund shall be in accordance with the rules prescribed by the committee with an approval of the Minister of Finance.

The committee may allocate the fund not exceeding five per cent of each year fund to be the expense of fund administration.

Section 29. A business operator who operates the business in the kind, field, size and has an amount of employee including the proportion of trainees compared to the total employees and which is in the area as prescribed by the Minister with the recommendation of the committee shall remit the contribution to the fund as specified under section 30 except such operator is a labour skill training provider as prescribed under Chapter I.

Section 30. For the purpose of collecting the contribution from a business operator under section 29, the Minister, by the recommendation of the Committee, shall have powers to prescribe the proportion of contribution not exceeding one per cent of the wages

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which the business operator paid in the previous year before the year it is to submit the contribution as well as the method of payment of contribution from a business operator

The minimum and maximum wages used for the calculation of contribution under paragraph one shall be as prescribed and notified by the Minister with the recommendation of the Committee.

Section 31. Any business operator who failed to pay the contribution within the prescribed time period or did not pay the full amount in proportion to the amount of trainees and the amount of employees shall pay a surcharge of one point five per cent per month of the contribution which has not been paid or the missing contribution as from the date following the payment date. In regard to a fraction of a month, if it is more than fifteen days it shall be deemed as one month. If it is less than fifteen days, it shall be disregarded.

In the case the Director-General orders the person who has duties to pay the contribution or a surcharge in paragraph one, if such person refuses to make the payment, the provisions relating to the administrative enforcement under the law on the administrative procedure shall apply and in the case where there is no official to execute the enforcement of order, the Department of Skill Development shall have the power to file a case in the Administrative Court to enforce the payment.

Section 32. Within six months from the date of the end of the fiscal year under the law on expenses budget, the committee shall submit the balance sheet and the account statement of the fund in the previous year which is certified by the Office of the Auditor General to the Council of Minister for acknowledgement.

The Minister shall submit balance sheet and the account statement to the Prime Minister to submit it to the House of Representatives and the Senate to be acknowledged, and cause the publication thereof in the Government Gazette.

CHAPTER IV

Rights and Benefits of the Training Provider

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Section 33. The training provider who arrange for the labour skill training in the occupation field as prescribed by an announcement of the Minister in section 7 shall obtain rights and benefits as following:

(1) The right to be exempted from the income tax under a special circumstance for the income of the training provider for the per cent amount of the expenses in arranging the training of labour's skill under this Act. In this respect, it shall be prescribed in the Royal Decree in accordance with the Revenue Code;

(2) The benefits of the assistance from the Department of Skill Development in respect of training, training relating to the curriculum development, training of the development of training equipment, training of the provider relating to the test of standard of labour's skill, training of the leader of the employees or any other training with the same characteristics;

(3) Benefits to receive consultation from the Department of Skill Development relating to the process of labour skill development;

(4) Any other benefits as prescribed by the Ministerial Regulation.

Section 34. In addition to the rights and benefits in section 33, the training provider who operates the labour skill training at the labour skill training centre established under section 19 shall obtain the additional rights and benefits as follows:

(1) The right to exemption from import duty and VAT for tool, machines, and equipment imported into the Kingdom to use in the labour skill training upon enactment of a Notification of the Ministry of Finance under the law on Excise Tax Rate and a Royal Decree under the Revenue Code.

In this respect, the applicant for the exemption shall present a list of the tool, machine, and equipment permitted by the committee for consideration;

(2) The right to deduct electricity and water bills twice the amount the training provider has paid as the expense for the labour skill training for the benefit in the calculation of the income tax upon enactment of a Royal Decree under the Revenue Code;

(3) Other rights and benefits as prescribed in the Ministerial Regulation.

Section 35. The application for the rights and benefits under section 33 (2), (3), (4) and section 34 (3) shall be submitted to the registrar in accordance with the rules, means, and conditions as prescribed by an announcement of the committee.

Section 36. Subject to the law on immigration, the training provider may bring an alien who is a skilled craftsman or is an expert to be a trainer including his or her spouse or person under the care of the skilled craftsman or is an expert into the Kingdom for the amount, conditions and duration as the committee sees fit but it shall not exceed the time period prescribed by the law on immigration.

Section 37. The training provider shall be exempted from the law on private school.

CHAPTER V
LABOUR SKILL DEVELOPMENT PROMOTION COMMITTEE

Section 38. There shall be the Labour Skill Development Promotion Committee consisting of the Permanent Secretary of the Ministry of Labour and Social Welfare as chairperson, a representative from the Ministry of Finance, a representative from the Ministry of Science and Technology, a representative of the Ministry of Education, a representative of the Ministry of Industry, a representative of Bureau of the Budget, a representative of the Board of Investment Office, a representative of Tourism Authority of Thailand, a representative of the Thai Chamber of Commerce, a representative of the Federation of Thai Industries, a representative of the Thai's Bankers Association, a representative of the Tourism Council of Thailand as members and other four members appointed by the Minister, which are two qualified persons, one representative from the employer and one representative from the employee, and the Director-General of the Department of Skill Development as member and secretary.

The committee shall have the power to appoint a government official in the Department of Skill Development as a secretary assistant.

The qualified member shall be appointed, by the Minister, from the persons who have experience in labour's skill development for no less than ten years.

The members who are a representative from the employer side and one representative from the employee shall be appointed, by the Minister, in accordance with the rules and means prescribed by the Regulation of the Ministry of Labour and Social Welfare.

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Section 39. The committee shall have the following powers and duties:

- (1) to submit opinion to the Minister in adopting the policy relating to the development of labour's skill and Labour Skill Development Fund;
- (2) to give a recommendation and consultation to the Minister on the issuance of the Ministerial Regulation, Regulation or Notification under this Act;
- (3) to prescribe the regulation or notification for the execution of this Act;
- (4) to conduct the national labour skill standard in different fields of occupation under section 22;
- (5) to specify rules on Promotion of Labour Skill Development;
- (6) to promote a business operator to use the person who passed the test for standard of the labour's skill to work for the field of occupation , size and characteristic of work as prescribed by the committee;
- (7) to promote the establishment of the labour's skill training centre and ;labour skill testing centre ;
- (8) to promote a competition of labour skill;
- (9) to promote the cooperation between public and private sectors in developing the labour skill and mutual usage of resources;
- (10) to track the result of labour skill development
- (11) to consider an appeal against a training providers status revocation order under section 48 paragraph two, and labour skill standard test provider suspension or revocation order under section 49 paragraph two;
- (12) to perform other acts as prescribed by this Act or other laws to be the powers and duties of the committee;
- (13) to perform other acts as assigned by the Minister.

Section 40. The member of the committee shall be in office for a term of two years.

A member who vacates office may be reappointed but may not be appointed for more than two consecutive terms.

Section 41. In addition to vacating office on the expiration of term under section 40, members appointed by the Minister vacates the office upon:

- (1) death;

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- (2) resignation;
- (3) being dismissed by the Minister due to negligence in the performance of duty or disgraceful behavior;
- (4) being an incompetent person or a quasi-incompetent person;
- (5) being bankrupt;
- (6) being imprisoned due to a final judgement except for the offence committed through negligence or a petty offence.

When a member appointed by the Minister vacates the office before the expiration of the term, the Minister may appoint a replacement member and such appointed person shall be in office for unexpired term of office of the member he or she replaces.

Section 42. At a meeting of the committee, no less than one - half of total members is required to constitute a quorum.

The Chairperson shall preside over the meeting, if the Chairperson does not attend or is not present at the meeting or is unable to perform the duties, the members present shall elect one amongst themselves to preside over the meeting.

A decision of the meeting shall be made by the majority of votes. In casting a vote, each member shall have one vote. In the case of an equality of votes, the presiding member shall have an additional vote as the casting vote.

Section 43. The committee shall have the power to appoint a subcommittee to act as assigned by the committee.

At a meeting of a committee, the provision of section 42 shall apply mutatis mutandis.

Section 44. In performing of duties under this Act, the Department of Skill Development shall be the secretarial unit of the committee and shall have duties to follow up the person who obtained rights and benefits to perform in accordance with this Act and report to the committee for acknowledgement.

CHAPTER VI REGISTRAR AND COMPETENT OFFICIAL

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Section 45. In the course of the performance of duties under this Act, the registrar or competent official shall have following powers:

(1) to issue a letter summoning the training provider, trainer, trainee, provider for the labour skill standard test, persons taking labour skill standard test, business operator or any relevant person to give statement or to issue an order requiring such person to submit document or other evidence for consideration;

(2) to enter into a place of training, labour skill training centre, labour skill standard testing centre, or business operation office during the operational hours in order to inspect and to give recommendation to the training provider, provider for labour skill standard test, or business operator for the execution of this Act.

Section 46. In the course of performance of duties of the registrar or competent official under section 45 (2), the training provider, provider for labour skill standard test, or business operator including relevant person or a person in that place shall facilitate as appropriate.

Section 47. In the course of performance of duties, the registrar or competent official shall present the identification card.

The identification card of the registrar or competent official shall be in the form prescribed by the Minister.

CHAPTER VII

REVOCATION OF THE STATUS OF TRAINING PROVIDER, SUSPENSION AND REVOCATION OF THE LICENSE

Section 48. In the case where the training provider violates or fails to comply with the provisions of this Act or fails to comply with the Ministerial Regulation, Regulations or Notifications as prescribed under this Act, the registrar shall have the power to order, in writing, the training provider to comply with or to correct within the specified time.

If the training provider fails to comply or to correct within the specified time prescribed in paragraph one, the registrar shall have the power to revoke a status of a training provider.

A revocation order of the training provider status shall be made, in writing, and sent to the training provider for acknowledgement. If the training provider is not found or refuses to receive the order, such order shall be posted openly in a place of training or the Labour Skill Training Centre as the case may be. It shall be deemed that the training provider has acknowledged the order as from the date of posting except in the case where the training provider is not found, it shall be deemed that the order is received after the period of fifteen days as from the date of posting.

In the case of revocation of a training provider status under paragraph two, if it is the pre-employment training, section 14 paragraph three shall apply to the trainee who has not complete the training in the date that the registrar issue a revocation of the training provider mutatis mutandis.

Section 49. In the case where the provider for labour skill standard test violates or fails to comply with the provisions of this Act or fails to comply with the Ministerial Regulation, Regulations or Notifications prescribed under this Act, the registrar shall have the power to order, in writing, the provider for the test of the standard of labour's skill to comply with or to correct within the specified time.

If the provider for labour skill standard test fails to comply with or to correct within the specified time under paragraph one, the registrar shall have the power to suspend the license or revoke the provider for labour skill standard test license, as the case may be.

The license suspension order or the license revocation order shall be made, in writing, and sent to the provider for labour skill standard test for acknowledgement. If the provider for labour skill standard test is not found or refuses to receive the order, such order shall be posted openly in a place of training or the Labour Skill Training Centre as the case may be. It shall be deemed that the provider for labour skill standard test has acknowledged the order as from the date of posting, except in the case where the provider for labour skill standard test is not found, it shall be deemed that the order is received after the period of fifteen days as from the date of posting.

During the period of license suspension or revocation, a provider for labour skill standard test shall not perform any act relating to the labour skill standard test.

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CHAPTER VIII

Appeal

Section 50. The training provider whose license was revoked under section 48 has the right to appeal to the committee within fifteen days from the date of receipt of the order and the committee shall inform the decision to the appellant within thirty days as from the date of receipt of the appeal.

The decision of the committee shall be final.

During the time of appeal, it shall be deemed that the appellant is still the training provider having rights and benefits prescribed under this Act until the appeal is dismissed.

In the case where the training provider does not appeal the withdrawal order of the registrar within the time prescribed in paragraph one or in the case where the committee dismissed the appeal, the rights and benefits in the provisions of this Act shall be restrained as from the date of the withdrawal order of the registrar or as from the date the committee dismissed the appeal, as the case may be.

Section 51. The provider for the labour skill standard test whose license is suspended or revoked under section 49 has the right to appeal to the committee within fifteen days from the date of receipt of the order and the committee shall notify the decision to the appellant within thirty days as from the date of receipt of the appeal.

The decision of the committee is final.

Section 52. The appeal and consideration of the appeal shall be in accordance with the Rules prescribed by the committee.

CHAPTER IX

PENALTIES

Section 53. Any person who fails to give statement or fails to comply with the order of the registrar or competent official, obstruct or does not facilitate the registrar or competent

official who performs his or her duties under section 45 or section 46 shall be liable to a fine not exceeding five thousand Baht.

TRANSITORY PROVISIONS

Section 54. The training provider under the Vocational Training Promotion Act B.E. 2537 shall be the training provider under this Act.

Section 55. The Vocational Training Promotion Committee under the Vocational Training Promotion Act B.E. 2537 which exists on the date that this Act comes into force shall perform the duty as the Promotion of Development of Labor's Skills Committee until the Promotion of Development of Labor's Skills Committee is established under this Act.

Section 56. All Ministerial Regulations, Regulations or Notifications under the Vocational Training Promotion Act B.E. 2537 which are effective on the date this Act comes into force shall be effective so far as it is not contradictory or inconsistent with this Act until Ministerial Regulations, Regulations or Notifications prescribed under this Act come into force.

Countersigned

Police Lieutenant Colonel Thaksin Shinawatra
Prime Minister

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